

**Quadrex Environmental Company, Inc. and Oil,  
Chemical and Atomic Workers International  
Union, AFL-CIO, Petitioner.** Case 12-RC-7519

July 31, 1992

**DECISION AND REVIEW AND ORDER**

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT  
AND RAUDABAUGH

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel, which has considered the Employer's request for review of the Acting Regional Director's Decision and Direction of Election. The request for review is granted as it raises substantial issues warranting review. Having carefully reviewed the entire record, we find, contrary to the Acting Regional Director, that the field service employees designated as "leads" are not statutory supervisors. Accordingly, they shall be included in the unit found appropriate.

The Acting Regional Director based his conclusion that leads are supervisors on his finding that they exercise independent judgment in assigning work and overtime, providing "verbal" evaluations of employees, suspending employees for poor performance, and resolving grievances.<sup>1</sup> We find there is insufficient evidence, however, to support his finding that the leads in question exercise independent judgment in performing those functions. Rather, they operate within parameters that have been defined by management.

With respect to making assignments, the leads follow a detailed project plan that has been put together by management. That plan provides a performance schedule and the leads assign employees according to staffing needs that have already been set by management to provide the skills needed for the job. Thus, the leads here serve in a manner similar to those in *McCullough Environmental Services*, 306 NLRB 565 (1992), as routine communicators of instructions. Like the leads in *McCullough*, the Employer's leads assign tasks that are predetermined by management. As in *Hydro Conduit Corp.*, 254 NLRB 433, 436 (1981), the Employer's leads carry out their jobs under the direction of management according to a schedule that has been established by management. If the leads encounter nonroutine problems, they must report them. Under such circumstances, employees lack sufficient discretion to be statutory supervisors. *Id.* at 438. The Board has previously noted that when employees have specific skills and management prepares a master schedule based on those skills, assignment of daily jobs amounts merely to routine implementation of orders. *George C. Foss Co.*, 270 NLRB 232, 234 (1984). Here, as in *Sears, Roebuck & Co.*, 292 NLRB 753, 755 (1989),

the leads' assignment of tasks to work crew employees demonstrates nothing more than the knowledge expected of experienced persons regarding which employees can best perform particular tasks.

Although it is undisputed that leads possess some limited authority to assign overtime when work falls behind schedule, leads review the performance schedule daily with management and explore ways to make up any lags in the schedule. Management normally makes all decisions regarding overtime assignments at that point. Only if the need for overtime arises at the last minute does the lead make an overtime assignment without management's prior approval. Under such circumstances, which employee is selected for overtime work is determined by that employee's specialization (e.g., welding), and the lead immediately notifies management of the assignment by voice mail. In addition, there is no evidence that leads have assigned such emergency overtime with any degree of regularity.

Over a period of time, field workers do not work administratively with only a single lead. They may work for 3 or 4 weeks on a crew with one lead and work on another crew with another lead the next 3 or 4 weeks. Consequently, it is impractical to have a single lead evaluate a field worker. Instead, each lead gives "verbal" evaluations to the Employer's manager of projects, who then completes a form used for performance appraisals, career development, including promotions, and salary planning. Normally a lead does not make a recommendation on promotion of a field worker. Indeed, there is no evidence that management acts on the basis of the leads' evaluations, or that any personnel actions whatsoever are based on those evaluations. "[A]uthority simply to evaluate employees without more is insufficient to find supervisory status." *Passavant Health Center*, 284 NLRB 887, 891 (1987).

The Acting Regional Director correctly found that leads possess the authority to order employees to leave the worksite due to safety or work performance problems. He also found, however, that in such circumstances the lead would notify management of the situation and management would determine independently, after conducting its own investigation, what, if any, action should be taken. As in *Somerset Welding & Steel*, 291 NLRB 913, 914 (1988), the evidence indicates that leads lack "authority to effectuate any ultimate personnel decisions." Thus, we find with respect to this factor that the Employer's leads lack the discretion necessary to confer supervisory status.

Leads are the first persons to receive complaints or grievances from field employees. Unless, however, those complaints involve such obvious, ministerial matters as timesheet errors, the leads merely pass them on to management for resolution. The leads' authority to correct routine, ministerial errors is merely a clerical

<sup>1</sup> It is undisputed that leads possess no other indicia of supervisory authority.

function that does not demonstrate supervisory status. See *John Cuneo of Oklahoma*, 238 NLRB 1438, 1439 (1978). Also, the leads' role in relaying employees' complaints or grievances to management is merely that of a conduit, and does not establish supervisory status. *Bowne of Houston*, 280 NLRB 1222 (1986).

In enacting Section 2(11) of the Act, Congress stressed that only persons vested with "genuine management prerogatives" should be considered supervisors, as opposed to "straw bosses, leadmen, . . . and other minor supervisory employees." *Chicago Metallic Corp.*, 273 NLRB 1677, 1688 (1985) (citing *S. Rep. No. 105, 80th Cong.*, 1 Sess. 4 (1947), *affd.* in relevant part 794 F.2d 527 (9th Cir. 1986). Therefore, "the Board has a duty to employees

. . . not to construe supervisory status too broadly because the employee who is deemed a supervisor is denied . . . rights which the Act is intended to protect." *Id.* at 1689 (footnote omitted). The burden of proving supervisory status is on the party who alleges that it exists. *California Beverage Co.*, 283 NLRB 328 (1987); *Bowne of Houston*, 280 NLRB at 1223; *Tucson Gas & Electric Co.*,

241 NLRB 181 (1979). The Board must judge whether the record proves that an alleged supervisor's role was other than routine communication of instructions between management and employees without the exercise of any significant discretion. *McCullough Environmental Services*, 306 NLRB 565 (1992). A mere inference of independent judgment without specific support in the record cannot be sustained. *Sears, Roebuck & Co.*, 304 NLRB 193 (1991).

Applying the foregoing standards to the facts of this case, we find insufficient support for the Acting Regional Director's conclusion that the Employer's leads are statutory supervisors. As the Board noted in *Chicago Metallic Corp.*, *supra* at 1689, "the exercise of some [alleged] supervisory authority in a merely routine, clerical, perfunctory, or sporadic manner" does not confer supervisory status on an employee. Accordingly, the Acting Regional Director's conclusion that leads are statutory supervisors is reversed, and the Decision and Direction of Election is amended specifically to include leads in the unit found appropriate.